

**Department of Behavioral  
Health and Developmental  
Services:  
Office of Human Rights**



**Guidance: 12VAC35-115-100**

**Restrictions on Freedoms of  
Everyday Life**

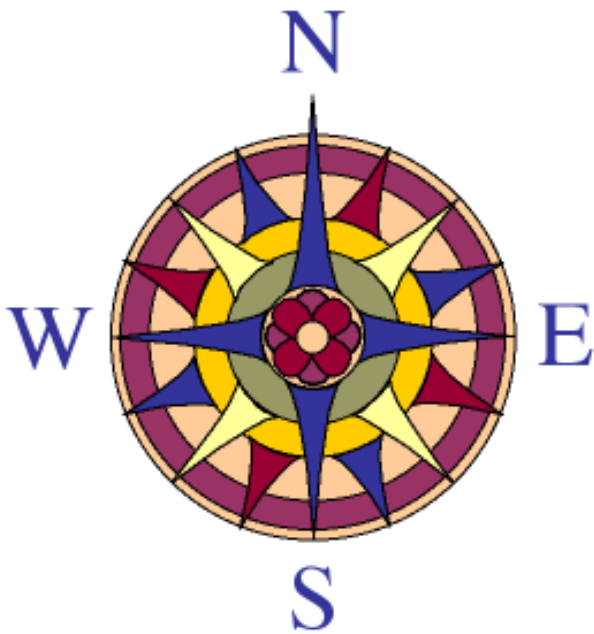
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# 12VAC35-115-100



- The purpose of this guidance is to provide direction and clarify application of the two means that 12VAC35-115-100 may be utilized per the Rules and Regulations To Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by DBHDS



# 12VAC35-115-100

- Restrictions of Freedoms of Everyday Life may be imposed via two different means:
  - Restrictions via Program Rules apply to all participants
  - Individualized Restrictions via an Individualized Plan



# 12VAC35-115-30:

## Definitions

- Restriction means anything that limits or prevents an individual from freely exercising his/her rights and privileges.
- Program rules means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.
- Person centered means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.
- Consent means the voluntary agreement of an individual or that individual's authorized representative to specific services.
  - Consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion. Consent may be expressed through means appropriate for the individual including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.



# 12VAC35-115-30:

## Definitions

- Behavioral treatment plan, functional plan, or behavioral support plan means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:
  - Improved behavioral functioning and effectiveness
  - Alleviation of symptoms of psychopathology; or
  - Reduction of challenging behaviors
- Plans require consent and signature; therefore, restrictions via plans require consent and signature
- Individualized services plan or ISP means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.



# Provider Foundational Responsibilities

- Per 12VAC35-115-50 Dignity D.2
  - Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights
- Therefore, providers in order to protect an individual's rights should have a policy (any procedure or protocol would be authorized via and reference that policy) to utilize or impose 12VAC35-115-100 ( Restrictions on freedom of everyday life).
  - Policy should allow for Restrictions via Program Rules and/or via ISP/Behavioral Treatment Plans



## 12VAC35-115-100:

### Restrictions on freedoms of everyday life

- As previously mentioned, there are two means to impose restrictions on freedoms of everyday life
  - Program Rules (to maintain a safe and orderly environment)
  - Behavioral/Individualized Plan (for effective treatment of the individual or to protect him or others from personal harm, injury, or death)
- Restrictions shall only be utilized to achieve therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency



## Per 12VAC35-115-100:

# Individuals receiving services are entitled

( freedoms vary according to service models and are only during the delivery of service)

- Freedom to move within the service setting, its grounds, and the community
- Freedom to communicate, associate, and meet privately with anyone the individual chooses
- Freedom to have and spend personal money
- Freedom to see, hear, or receive television, radio, books, and newspapers, whether privately owned or in a library or public area of the service setting
- Freedom to keep and use personal clothing and other personal items
- Freedom to use recreational facilities and enjoy the outdoors
- Freedom to make purchases in canteens, vending machines, or stores selling a basic selection of food or clothing
- Receive services in the least restrictive setting to his freedom





## **Program Rules and Restrictions**

12VAC35-115-100B.4

- Providers may develop and enforce written program rules, but only if the rules do not conflict with these regulations or any individual's services plan and are needed to maintain a safe and orderly environment.



# Program Rules and Restrictions

- 12VAC35-115-100B.5
  - Providers shall, in the development of these program rules:
  - Involve input suggestions of all individuals who are bound by rules
  - Apply rules in the same way to all individuals
  - Give and review rules to individuals or authorized representatives in an understandable means including explanation of possible consequences for violations of program rules
    - Criteria for Suspensions (if applicable) from a program should be in the program rules
  - Post summary of rules in all areas individuals or families may have regular access
  - Submit rules to LHRC for review/approval upon request of the advocate/LHRC
  - Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC



# Program Rules and Restrictions (summary)

- Apply to all individuals in the program
- Are for safety and order
- Are explained and posted for individuals
- Are agreed to by individual and therefore consented to by admission into the program and annually thereafter via treatment plan
- Advocates should/may request LHRC review
- Some restrictions may require specific policies (i.e.: video monitoring)
- Examples of program rule restrictions may include but are not limited to:
  - Video monitoring
  - Locked cabinets/refrigerators
  - Secured gates/fences around property
  - Door or window alarms
  - Limiting amount of possessions
  - Limiting access to media
  - Limiting cell phone use
  - Quiet hours
  - Meal times
  - No smoking



## **LHRC Points of Emphasis Regarding Program Rules**

12VAC35-115-250D.5 Offices,  
compositions, and duties

- Upon request of the human rights advocate, provider, director, or an individual or individuals, or on its own initiative, an LHRC may review any existing or proposed policies, procedures, practices, or behavioral treatment plans that could jeopardize the rights of individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any human rights advocate, employee of the provider, or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these plans , policies, procedures, and practices.



## Individual Plans and Restrictions

12VAC35-115-100B

It is always important to remember that restrictions are not the first choice.

Never lose sight of the universal starting point, in other words, freedom.

- Encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.
- Do not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.



# Individualized Plans and Restrictions

## Requires:

- A qualified professional involved in providing services has, in advance, assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently

## Requires:

- A qualified professional involved in providing services has, in advance, determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death
- A qualified professional in providing services has, in advance, documented in the individual's services record the specific reason for the restriction.



# Individualized Plans and Restrictions

## Requires:

- A qualified professional involved in providing services has explained, so that the individual can understand, the reason for restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible.

## Requires:

- A qualified professional regularly reviews the restriction and that the restriction is discontinued when the individual has met the criteria for removal.
  - Benchmarks and objectives provide measurable outcomes. It is unfair to keep restrictions if goals have been met.
- If a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose the restriction, the restriction shall be documented in the individual's services record.



# Individualized Plans and Restrictions (summary)

- Prior professional review of alternatives
- Prior professional review of necessity and benefits
- Prior professional review of reason
- Prior provision of understandable explanation of restriction, use, and criteria for discontinuation
- On going professional review of use and discontinuation upon meeting established criteria
- Legally imposed properly documented in records
- As restriction is part of plan, requires consent of plan
- If there is a protocol, it should be referenced in the plan, and a policy should allow for the use of the plan





## **Individualized Plans and Restrictions**

Examples include but are not limited to:

It is always wise to check with your local Human Rights Advocate prior to starting restrictions.

- Use of audio monitoring equipment in bedroom
- Limiting access to possessions
- Contracts to earn freedoms
- Bedroom door alarms
- Floor sensor alarms
- Locked food
- Indoor gates or half doors



## **LHRC Point of Emphasis**

12VAC35-115-250D.7 Offices,  
compositions, and duties

- Receive, review, and comment on all behavioral treatment plans involving the use of restraint or time out and seclusion, restraint, or time out policies for affiliated members
- Please note that the LHRC is not required to review plans with restrictions unless restraint, seclusion, or time out is utilized. However, as previously noted, upon request the LHRC does have review authority. Best practice would suggest providers request review of restrictive plans by a human rights advocate.



# Key Point Comprehension Review

- 1. True or False: Programs are not permitted to limit or restrict the freedoms of individuals receiving services?
  - False: Under Human Rights Regulations 12VA35-115-100, restrictions may be imposed to maintain a safe and orderly environment or for effective treatment of the individual or to protect him or others from personal harm, injury, or death



# Key Point Comprehension Review

- 2: True or False: The two means to impose restrictions on freedoms of everyday life are: program rules and individualized plans.
  - True: Program rules may provide restrictions for all individuals receiving services and individualized plans may include restrictions on an individual, person centered basis.

# Key Point Comprehension Review

- 3. True or False: Providers should have policies in place which address the programs practices regarding restrictions.
  - True: without a policy, programs do not have authority to impose restrictions permitted under the regulations

# Key Point Comprehension Review

- 4. Multiple Choice: Individuals freedoms do not include:
  - A. The freedom to do whatever they want
  - B. The freedom to have and spend personal money
  - C. The freedom to have personal possessions
  - D. The freedom to see or use media (tv, radio, etc)
  - E. The freedom to receive services in the least restrictive setting possible
- A. Freedom to do whatever they want

# Key Point Comprehension Review

- 5. True or False: Program rules apply to all receiving services, should involve participants input, should be posted, may be reviewed by the LHRC.
  - True

# Key Point Comprehension Review

- 6. True or False: Some restrictions may require their own policy.
  - True, restrictions such as restraint, seclusion, or time out, as well as video monitoring require individual policies



# Key Point Comprehension Review

- 7. True or False: Restrictions imposed upon individuals in plans must professionally ensure the all the following: documentation of alternatives, documented necessity, documented reason for restriction, explained and consent obtained, removed when criteria is met, or court/legal requirement is documented in record.
  - True: without the above professionally assessed and documented, no individual restriction should be utilized

# Key Point Comprehension Review

- 8. True or False: If the individual restriction involves a behavioral plan with restraint, seclusion or time out, the plan must be reviewed by the LHRC.
  - True

# Key Point Comprehension Review

- 9. True or False: The LHRC may request to review any policy, protocol, practice, or plan which may impact the rights of individuals served.
  - True, the LHRC is a check and balance to protect individuals and their rights

# Key Point Comprehension Review

- 10. True or False: Before implementing restrictions, it is sound therapeutic practice to consult a Human Rights Advocate.
  - True, Human Rights Advocates are available to provide technical assistance and guidance to programs to ensure and protect the rights of individuals receiving services. If there is ever a question or concern, contact your local Advocate